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COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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COMMISSIONERS
WILLIAM D. DONAN, CHAIR
STEPHEN A. SANDERS
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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **AUGUST 11, 2011**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** The Chair and Commissioner William D. Donan, Commissioner Stephen A. Sanders and Commissioner J. Duncan Pitchford were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Thompson, Russell who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New.
- ❑ The **minutes** for the meeting on **7/14/11** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

- **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

 - 10-MSRC-184 James Peterson was called and did not appear or participate. OMSL by counsel moved for **permanent revocation** as a sanction for failing to comply with the terms of his probation as agreed in a previous settlement agreement adopted as a Final Order. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 10-MSRC-014 Jeremy McCoy and 10-MSRC043 Jared Blalock called and OMSL moved for a **continuance** to check on service. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
 - 08-MSRC-211 Shane Martin was called and he requested an amendment to his previous **settlement** so as to complete his probation with additional testing. A motion for approval was made and was seconded. The motion carried unanimously, and was ratified by the Chair.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

 - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 11-MSRC-139 Randall Jason Meade, 11-MSRC-140 Steven Cooley, 11-MSRC-141 Kenneth Alden Collett, 11-MSRC-145 Forrest Michael Warfield, 11-MSRC-146 Dustin Eastham, 11-MSRC-147 Benjamin R. Richardson and 11-MSRC-148 Thomas Kyle Napier who were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. A motion was made to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were ratified by the Chair.
 - 11-MSRC-105 Virgil Howell, 11-MSRC-123 Robert Wayne Powell and 11-MSRC-126 Shannon B. Fultz were called and did not appear. OMSL moved for **revocation** for not less than one year. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 11-MSRC-142 Robert Todd Bailey and 11-MSRC-144 Jonathan Nelson were each called and did not appear. OMSL moved to **Show Cause**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-138 Daniel Crick was called. He presented evidence that demonstrated that more likely than not the suspension was in error. He moved to have his **appeal sustained**. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 11-MSRC-143 Joseph Adkins Jr and 11-MSRC-149 Daryl E. Adkins were called and OMSL informed the Commission that they requested a **continuance** because of transportation difficulties. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 11-MSRC-132 Lawrence Anderson, Jr., 11-MSRC-133 Jason R. Barnes, 11-MSRC-137 William Jarrod Sparks, 11-MSRC-150 Billy J. Johnson, 11-MSRC-151 Larry D. Daugherty, 11-MSRC-152 Eric D. Pauley, 11-MSRC-153 Terry Hall, 11-MSRC-154 Robert Brian Evans, 11-MSRC-155 James Dillman, 11-MSRC-156 David Shepherd, 11-MSRC-157 James R. Green were each called in turn and did not appear or participate. OMSL by counsel moved to **revoke** as to each. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

The 11:00 a.m. Docket for Reciprocity actions regarding Virginia Drug Sanctions:

- *None submitted for this meeting.*

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- 08-MSRC-132 Bobby Davis Poston, 08-MSRC-266 Carlos B. Asher, 08-MSR-306 Donald J. Dye, 10-MSRC-069 Chad Bowling and 10-MSRC-169 Brian Higgins were each called in turn. Each presented reasons sufficient to restore them to probationary status with drug testing and the necessary training thus the **prior order was modified** with these new terms. A motion was made to **grant**, which was

seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.

- 11-MSRC-101 Paul Bartley and 11-MSRC-110 Roy Neace were called so that OMSL may move to **waive the 30 day** suspension because of administrative delay. A motion was made to **grant**, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- 08-MSRC-148 Michael Weir and 11-MSRC-108 Jeffery S. Brothers were each called in turn. None participated or otherwise appeared regarding their request to modify a prior order. A motion to **deny** was made, seconded and approved.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

11:00 a.m. Petitions for an Order filed by OMSL in roof control cases:

None submitted for this meeting.

The 1:00 p.m. Docket for “traditional” type cases:

- 11-MSRC-096 Donald Coots, settlement agreement approved and adopted as a Final Order.

Old Business

❑ Ratification of Final Order:

None submitted for this meeting.

❑ Administrative Hearings Update;

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday September 8, 2011, and the possibility of one or more traditional type hearings.

❑ Status Report & Abeyances;

None submitted for this meeting.

❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ **Office & Administrative;**

- ❑ The General Counsel advised that the **mileage** remains forty seven (47) cents per mile.

❑ **Training**

- **Required Hearing Officer Training:** Next required Hearing Officer Training is in June 2012 at the KY History Center. Initial Hearing Officer training will be in March 2012.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

❑ **Probable Cause Determinations**

None submitted for this meeting.

❑ **Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday September 8, 2011**.
- ❑ **Adjournment:** Commissioner and Chair Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday September 8, 2011. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Acting Chair
Mine Safety Review Commission

9/8/11
Date